Appln. Serial No. 09/943,871
Amendment Dated June 25, 2007
Reply to Office Action Mailed April 26, 2007

REMARKS

In the Office Action dated April 26, 2007, claims 20-22 and 24-26 were rejected under 35 U.S.C. § 101; and claims 1, 4, 9-12, 14-17, 19, and 24-28 were rejected under § 103 over U.S. Patent No. 7,006,477 (Balachandran) in view of U.S. Patent No. 6,842,462 (Ramjee).

Applicant acknowledges the allowance of claims 2, 3, and 5-7, and the indication that claims 8 and 18 contain allowable subject matter.

Claim 18 has been amended from dependent form into independent form, thereby placing that claim in condition for allowance, as indicated by the Office Action.

Independent claims 14 and 24 have been cancelled, without prejudice, to render the rejection of those claims moot.

REJECTION UNDER 35 U.S.C. § 101

Claim 20 was rejected as being directed to non-statutory subject matter. The Office Action stated that "an article" is non-statutory since it is directed to a judicial exception under § 101. It is respectfully submitted that an article as recited in claim 20 is an article of manufacture that is statutory subject matter. *See* 35 U.S.C. § 101 ("whoever invents or discovers any new and useful process, machine, *manufacture*, or composition of matter ...."). As indicated by the M.P.E.P., "[a]n invention that is not a machine, *an article of manufacture*, a composition or a process cannot be patented." M.P.E.P. § 2107.01 (8th ed., Rev. 5), at 2100-22. Thus, both § 101 and the M.P.E.P. recognize that an article of manufacture is one of the classes of subject matter protectable under the patent laws.

Therefore, the general statement in the Office Action that "article" is considered non-statutory is contrary to 35 U.S.C. § 101 and to the M.P.E.P.

Moreover, note that claim 20 recites that the article comprises at least one computer-readable storage medium that contains instructions that when executed cause at least one processor in a wireless access system to perform the recited tasks. As noted by the M.P.E.P., "a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory." M.P.E.P. § 2106.01, at 2100-18.

Therefore, it is respectfully submitted that claim 20, and its dependent claims, are clearly directed to statutory subject matter.

Independent claim 22 similarly recites statutory subject matter.

Since no prior art rejection has been asserted against independent claims 20 and 22, it is respectfully submitted that these claims (and any dependent claims) are in condition for allowance.

8

REJECTIONS UNDER 35 U.S.C. § 103

In the Response to Arguments section of the Office Action, the Office Action simply noted that Applicant's arguments submitted in the previous reply "have been fully considered but they are not persuasive." 4/26/2007 Office Action 9. However, the Office Action failed to provide an explanation regarding why Applicant's arguments were considered non-persuasive. Applicant respectfully submits that the final rejection is improper as failing to properly respond to Applicant's previous arguments. Therefore, Applicant respectfully requests the issuance of a new Office Action that explains why Applicant's arguments are non-persuasive.

Specifically, with respect to claim 1, Applicant had previously argued that neither Balachandran nor Ramjee teaches or hints at selecting one of plural types of protocol stacks in the wireless network controller to use for communications over the air link between the wireless network controller and mobile station *based on which of the plural training sequences* is in the received message. As disclosing the selecting task, the Office Action cited column 20, line 56-column 21, line 16, of Balachandran. Since this passage of Balachandran does not refer at all to training sequences, it clearly does not provide any teaching or hint of using training sequences to select among protocol stacks. Ramjee also fails to teach or hint at using training sequences to select from among protocol stacks. Therefore, it is clear that the hypothetical combination of Balachandran and Ramjee fails to teach or hint at all elements of claim 1. A *prima facie* case of obviousness has thus not been established with respect to claim 1.

It is respectfully submitted that independent claim 9 is also non-obvious over Balachandran and Ramjee. Claim 9 recites selecting one of plural types of protocol stacks to use for communications over an air link between the wireless network controller and the mobile station based on an indicator, where the indicator comprises a parameter used for contention resolution by the wireless network controller for distinguishing between multiple mobile stations that are contending for a common resource. The Office Action cited column 3, lines 11-25, and column 20, line 50-column 21, line 16, of Balachandran as disclosing this feature of claim 9. The cited column 3 passage of Balachandran refers to interleaving bursts using a particular sequence and transmitting interleaved bursts from a first station to a second station, and taking advantage of statistical variations between real-time communications and non-real-time

9

Appln. Serial No. 09/943,871
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communications. The cited passages in columns 20 and 21 refer to procedures to perform real-time scheduling of uplink and downlink traffic channel resources, where the procedures include providing access requests on a FRACH, and performing traffic channel assignment on FASSCH or BFACCH. The cited passages of Balachandran also note that acknowledgments to assignments occur on either FACKCH or BFACCH.

However, there is no hint whatsoever in these passages of Balachandran of using a parameter used for *contention resolution* by the wireless network controller to select one of plural types of protocol stacks. Balachandran does note that an ARI (access request identifier) can be used to perform contention resolution; however, nowhere in Balachandran is there any hint that ARI is used to perform selection from multiple protocol stacks.

Ramjee also fails to disclose or hint using a parameter for performing contention resolution to select from among plural types of protocol stacks. Therefore, the hypothetical combination of Balachandran and Ramjee does not teach or hint at all elements of claim 9.

A *prima facie* case of obviousness has thus not been established with respect to claim 9.

CONCLUSION

Allowance of all claims is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 20-1504 (NRT.0102US).

Respectfully submitted,

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10